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SUBJECT: EXPANDING IPR AWARENESS AMONG MEXICAN JUDGES

Summary

1. (SBU) The Embassy and the United States Patent and Trademark Office (USPTO), in coordination with the National College of Magistrates and Judges (Colegio Nacional), held a four-day workshop on intellectual property civil and criminal cases for Mexican judges in Mexico City from September 21-24. Financed by USPTO grant money from State/INL, the program focused on providing the participants with a better understanding of intellectual property and how to adjudicate such cases in civil and criminal procedures. The Mexican reaction to the course was very positive, and prompted considerable discussion as to how to possibly improve the Mexican judicial system and the handling of such cases. The Embassy plans to capitalize on the success of this event and invite some of the participants to receive additional training in a five-day study tour in the United States. End summary.

Students and Instructors

2. (U) The September 21-24 program was attended by 26 civil and criminal judges and magistrates from Mexico's judicial system within Mexico City. The Colegio Nacional organized the Mexican participation. USPTO funded the participation of U.S. District Court Judges Ronald Lew, Bernice Donald, and James Rosenbaum as well as District Court Clerk Felicia Cannon. They were ably assisted by USPTO's Jackie Morales. In addition, senior officials from the Mexican Institute of Industrial Property (IMPI - counterpart to the U.S. Patent and Trademark Office) and the National Copyright Institute (INDAUTOR) delivered overviews of copyrights, patents and trademarks and how they are protected under Mexican law.

Course Content

3. (U) The sessions were held in the evenings of September 21-24, generally from 5-9 pm, which allowed the Mexican judges and magistrates time to see to their court responsibilities during the day. The program addressed specific policy and legal principles of IP protection and enforcement. Sessions were dedicated to overviews of copyright, patent, and trademark law; elements of criminal and civil trademark counterfeiting and civil and criminal copyright infringement; evidentiary considerations; provisional measures; additional remedies; deterrent sentencing; and case management. The U.S. judges and the Court Clerk took turns introducing these topics,

explaining how these issues were addressed in the U.S. judicial system, and then would open up the discussion to the Mexican judges to explain how these issues were treated in the Mexican judicial process. The U.S. judges made considerable use of case studies that allowed the participants to understand better how to adjudicate IP cases effectively.

A Trip to the Mexican Courts

¶4. (U) As part of the preparation for her presentation on Case Management, the Embassy arranged a morning visit for U.S. District Court Clerk Felicia Cannon to the municipal and federal district civil courts in Mexico City. For Ms. Cannon and the EconOff, this was a fantastic opportunity to witness how the judicial system works in Mexico. Mexico shares many features of other civil law jurisdictions, but we learned quickly the striking differences with the U.S. legal system and the challenges that the unique features of Mexican law (such as the amparo proceedings) present to the Mexican legal process. We were also given a demonstration of the electronic filing system for civil court cases that is currently being developed in-house in the First Federal District Court in Mexico. Court officials told EconOff that the tests of the pilot program have proven successful and they hope to distribute the system for use by all federal civil courts within the year.

Achievements, Revelations, and Next Steps

¶5. (SBU) Feedback from the Mexican attendees was very positive, particularly with respect to the increase in understanding the

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various international, U.S., and Mexican codes and regulations that govern the adjudication of IP cases. The heavy focus on the importance of protecting and enforcing intellectual property law also received high marks, as did the many case studies. Participants also appreciated the personal connections made between the U.S. and Mexican judges, which we hope will lead to future cooperation and consultation on IP cases and concerns. Bringing a group of U.S. judges to present case studies and generate a discussion among a small group of their Mexican counterparts has proven an effective strategy in creating awareness as to the importance of IPR protection and enforcement. Mexican judges are more willing to receive advice from and share best practices with other judges than from lawyers, industry or other government agencies.

¶6. (SBU) An interesting issue that arose from the discourse was the concern among the Mexican participants over the extent of power exercised by IMPI in managing the IP regime in Mexico. For example, a patent or trademark holder in Mexico seeking redress against a possibly infringing product must initiate an administrative infringement action within IMPI rather than through the civil court system - as in the United States. Several judges called for judicial reform to extend civil jurisdiction over such infringement actions in order to check IMPI's perceived power. However, throughout the years IMPI has gained substantial experience and knowledge over civil cases. The judiciary has begun to realize its role in IP protection and enforcement, but judges will require substantially more training and experience before they should be granted civil jurisdiction over these cases.

¶7. (SBU) The Mexican participants expressed a strong desire for additional such programs. The Embassy has two proposed next steps. Together with the Department of Justice and USPTO, we plan to assist the Mexican judiciary in organizing and providing U.S. speakers to their annual international IP conference. Last March's conference in Monterrey had more than 250 participants, including 50 international judges. The third International Conference on Intellectual Property will be held in Merida in March 2010. In addition, together with the USPTO, in Spring 2010 we will organize a study tour for several of the judges that participated in this workshop. The tour will be held in the United States, possibly within the Ninth Circuit, and will expand further the topics addressed in this workshop, covering more advanced issues in civil

and criminal enforcement, special trial procedures, and sentencing guidelines in IP cases.

COMMENT

18. (SBU) COMMENT: Industry and Mexican government officials alike have told EconOff and USG officials that problems persist in Mexico with the civil and criminal litigation of intellectual property rights, as Mexican judges do not understand IP law or view criminal copyright infringement as a minor offense. Some even perceive it as their responsibility to defend the weak Mexican "entrepreneur" from the large multinational companies in IP legal actions. Consequently, many IP cases are dismissed on technicalities and few deterrent sentences are awarded. Embassy will continue to work with the Mexican judiciary to increase their understanding of intellectual property and how to adjudicate such cases in civil and criminal procedures. In addition, as the handling of intellectual property cases by the Mexican judicial system is not our only concern, we would like to pursue a similar program for Mexican judges and magistrates on competition law. END COMMENT.

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